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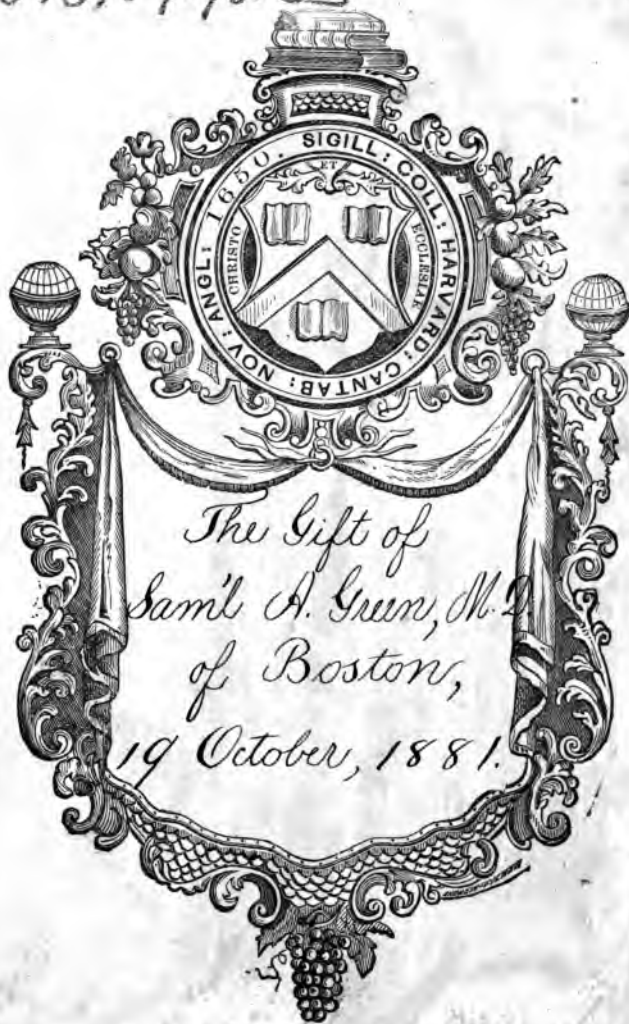
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THE OLD SOUTH

REMARKS OF

HON. JONATHAN A. LANE

UPON THE BILL AUTHORIZING THE

LEASE OF THE MEETING-HOUSE,

PENDING IN THE

MASSACHUSETTS SENATE.

APRIL 23. 1874.

BOSTON:

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of Boston.

SPEECH OF SENATOR LANE.

I DO not speak on this question for fame or applause. I cannot expect on this or any arena to compete with distinguished members of the Suffolk bar! I believe the petitioners in this case are here as honest men, with an honest purpose, *honestly sought*, and that they deserve to receive a favorable and speedy reply. With this conviction, although at a sacrifice of my own personal feelings of attachment to "the most venerable and sacred of church buildings in America," the love of all our Boston boys, and whose existence is imperilled by our decision,—so that its graceful spire may possibly ere long cease to be a landmark and guide in our labyrinth of circuitous ways,—yet, obligation to that sacred trust which it has so long sheltered, and to which it has ceased to be a fit residence, and fidelity to the spiritual, rather than the material, oblige me to give to these parties and their cause my vote and voice.

Two hundred years ago, when the religious society whose affairs are now under discussion came into existence, the spot on which we stand was a beautiful hill-pasture, commanding a wide prospect of sea and land. To borrow the terms of an old chronicler, "from the top of this mountain a man may overlook all the islands which lie before the bay, and descry such ships as are upon the sea-coast," and, as ex-

pressed by a later and more elegant writer, describing Boston and its suburbs, "the country round about it is exceedingly delightful, and from a hill which stands close to the town, where there is a beacon erected to alarm the neighborhood in case of any surprise, is one of the finest prospects, the most beautifully variegated and richly grouped of any, without exception, that I have ever seen." Immediately in view, however, was the town of Boston, then containing a population of about 1,500 families, dwelling in comfortable houses, which were irregularly and carelessly scattered over the northern end of this peninsula. In one of these, of the better sort, called by her "a new mansion house," two stories high, fronting south, on the high street leading to Roxbury, nearly opposite the end of School Street, with a garden stretching to Milk Street (then a lane not named), skirted along the street by a row of beautiful buttonwood trees, and called, from its attractiveness, "the Green," resided a large-hearted, Christian woman, Mary Norton, widow of John Norton, late pastor or teacher of the First Church in Boston. This ground, which is now the Old South property, is part of an original grant to Governor Winthrop, who, in 1643, conveyed it to his son Stephen, whose widow, in 1639, sold it to Mr. John Norton for £200; and agreeably to a provision in Mr. Norton's will, Mrs. Norton, in 1669, by deed, and 1677, by will, gave the same for a house of worship and parsonage to the Third Church.

This church, afterwards called the "Old South," to distinguish it from the New South, subsequently planted on Summer Street, was a secession movement from the First Church; and the first gift of Mrs. Norton, she being one of the seceders, gave them the start of land enough to build upon. But the liberality of this good woman is shown in the fact, that while there was for some twelve years after a breach between these churches, yet in her will, made before good feeling was

restored, she provides for a gift to the First Church of one hundred pounds, one half of the cost of this property, and thus establishes the fact that her great interest in the Third Church did not extinguish her true and first love. I might here add that the First Church, whose one hundred pounds was not made a trust nor invested in land, and therefore has perhaps saved controversy, has passed through several changes, and is now also removed from the business portion of the city to Back Bay, not far from the new site of Old South, where they are about as near each other as they were in those ancient times. The former may perhaps now be fairly classed as an Orthodox-Unitarian church, while the Old South is still Orthodox-Trinitarian, — either of them, I presume, orthodox enough for all practical purposes, Mr. President. *If* any advantage is to be conceded to the Old South in the matter of theological opinions, I suppose it may fairly be attributed to the fidelity with which the trustees of this property have for these several intervening generations kept this trust as it was established, and according to the terms of the deed, as a "*church society for the public worship of God, being the Third Church of Christ in Boston, from time to time, and at all times forever,*" and such it is to-day.

And now the Old South Society are before this Honorable Legislature of 1874 as petitioners. What do they want? In 1845 this Society, feeling it to be not only inconvenient, but unsafe for the purposes of the trust, to continue the same as it had been, got an act of incorporation, in which act, placed *there by themselves, and showing a deliberate intent to perpetuate the worship of God and the home of the church on that spot forever*, was this restriction: "Said corporation is hereby authorized and empowered to demise and lease all or any of said real estate, *excepting the meeting-house and land under the same*, in such manner and upon

such terms and conditions as may seem needful or expedient." Two years ago this restriction was modified, authorizing a lease to the United States Government for two years. They now desire that the act of incorporation should be amended, so as to authorize them "to demise and *lease*, not sell, its meeting-house, and the land under the same, in such manner and upon such terms and conditions as may seem needful or expedient; and all income arising therefrom shall be used for the support of the public worship of God and for the other purposes set forth in the act of incorporation."

It is beyond controversy, that the act of incorporation does not essentially change the trust. Before, the trustees were elected by the church and pew proprietors; since, by the latter, as their standing committee. The act says they shall be deemed and taken to be the successors of said proprietors, and hold the property for the *same purposes*.

To better carry out these purposes, it has at length become imperative that the causes which have applied to them with equal force as to other societies, only have been longer resisted, should now have conclusive weight, and this ancient and influential church be gathered where it may enter upon a new career of enlarged usefulness, as it was in the beginning among the homes of the people. Let us, then, see if this property is a trust, for what purpose it was created, and what obligations are upon those who legally and rightfully hold it.

In considering this question, I ask senators, for a few moments, to refer with me to the ancient documents, deeds, and will of Madam Norton, as throwing more light than anything else on this subject. My friend, Senator Hayes, has referred to them in some measure.

I am impressed more especially, at the outset, by the phraseology used by this Christian woman, which I do not regard as empty phrases. The first expression that comes to

us is the beginning of first deed: "To all Christian people to whom these presents shall come." I like to feel, Mr. President, that these religious phrases mean something, and I take the liberty of urging senators to heed the injunction of Madam Norton.

In the first deed to which I shall refer you, we come to this expression: "In confidence of their faithfulness to perform that *trust* which I shall repose in them." Then, in the next page, we find this expression: "To such as they shall associate to themselves, their heirs and successors forever, for the erecting of a house for their assembling themselves together publicly to worship God, as also the erecting of a dwelling-house for the pastor or teacher to the said church or assembly, and *for no other intent, use, or purpose whatsoever.*" These last are subsequently legally defined by the judgment of Chief-Justice Parsons and the honorable Jeremiah Mason, to which I shall hereafter refer. It is clear enough, in the language thus far gone over, that the plain intent of Mrs. Norton was to provide for the needs of this church and assembly and their minister, which were alone the objects of her thought and care. In a subsequent deed, conveying an additional small portion of land needed by the church, we find more of this quaint and impressive phraseology: "And such as now are associated to them, or shall be associated to that church-society forever, their heirs and assigns, for their public worshipping of God; for the use of their minister or ministry orderly chosen by the said society, *being the third church of Christ in Boston, from time to time, and at all times forever.*" I confess, Mr. President, I cannot refrain from commenting on this quaint phraseology. It may have been a way they had of putting things in those days, and not of special significance, but I prefer to regard it as deliberately employed, and signifying the lofty purpose and far-sighted vision of this saintly woman. These words

seem to me to be both a prayer and a prophecy, and my feeling is so to decide this case as that the prayer may be answered, the prediction fulfilled, and this Third Church of Christ in Boston *stand one and undivided as long as our city itself endures.*

We now come to the decisions of Parsons and Mason on the question, "Can the society erect buildings or stores on their land to let, for the purpose of applying the rents for the support of public worship and for the benefit of the society, in view of the terms of her deed by which said land was restricted for no other *use, intent or purpose whatsoever?*" To this question, I submit the decision of Chief-Justice Parsons as follows: "As the conveyance is to the grantees, their heirs and successors forever, without any words of condition or limitation annexed to the fee, it is my clear opinion that the society may erect the buildings or stores aforesaid for the said purposes; that the words 'and for no other use, intent or purpose whatsoever,' contains only *a direction*, a deviation from which will not defeat the title of the society."

In this opinion the Hon. Jeremiah Mason, in 1845, expressed his concurrence, and he also declares that the deed created a valid trust, and that the parish hold the land subject to that trust. It appears, then, that the same principle applies to both church building and parsonages. The latter have long since been abandoned, as, on account of location, they were not adapted to the comfort of the minister. If, then, the comfort, convenience, advantage, prosperity, and growth of the church are to be promoted by a change, it is not only a right, but a duty, to make such change, inasmuch as the church and its welfare are of so much, also greater importance. We come, then, to the result that Mrs. Norton gave this estate to serve the church withal, and not for any other *purpose whatsoever*; and any disposal of this property,

or any part of it, which does not promote with wise economy the end she aimed at, we cannot favor by our action.

The petition in this case, duly advertised, so that all the world knew their purposes, was in proper course referred to the Committee on Parishes and Religious Societies, two of the Senate and five of the House, none of whom were from Suffolk County. They seemed to me to be entirely unprejudiced, intelligent on the subjects before them, and disposed to give all parties a fair and patient hearing.

Petitioners and remonstrants were heard on every point which either side desired to present, and the affairs of this church and society were examined in minute detail. Not only the parties in immediate interest, but many prominent citizens, and in fact everybody who desired to do so, had an opportunity to express their views in this matter. And at the close of an exhaustive hearing, eminent counsel retained by the remonstrants submitted their case. Yet, in the face of the immense pressure brought to bear upon them through the press, by learned counsel and otherwise, I was gratified to learn that they saw clearly the merits of this case, and were unanimous in their report in favor of the petitioners.

In regard to all the detail of the evidence submitted to them, I must decline, out of regard for the time and intelligence of the Senate, an elaborate review of the same. We ought to be willing to consider settled what they have considered proven. The honorable senator from the Second Suffolk District has gone into many matters, which, if it were necessary, we could follow and refute at every point that is of any weight.

We certainly shall not restore those figures of straw and clay which he found it so easy to overthrow, whose unamiable faces were, by acknowledgment of the chairman of this committee, not seen there, and have no business here. I desire senators to take special note of this consideration,

that if the majority, in their conduct of this affair, had shown a disposition to crowd or to push this matter unjustly or in an unreasonable way, it seems to me it would have been the duty of the committee to have shown their sense of this impropriety by refusing to grant their request, or by a minority report.

The report of the committee will indicate that the majority of this Society were acting from a sense of duty, and the minority have received all reasonable consideration at their hands. Now, Mr. President, before I discuss the substitute bill, I desire to consider the value of the Old South property and its relation to the tax-payers of Boston, especially on account of the persistent misrepresentation on this subject of one of the most influential of the daily journals. The impression has gone abroad that the Old South Society is doing a wrong, perpetrating a flagrant injustice on the tax-payers of Boston. There never was a more unjust insinuation. It is utterly false in every respect.

The land conveyed by Mrs. Norton was about four fifths of an acre, thirty-five thousand feet, and every inch of it to-day, with the buildings thereon, is taxed the same as if it was owned by you or me. The church on the corner, of course, has been exempt until recently; it is now being used for secular purposes, and is also paying a tax; and about one fourth of the entire income the Old South Society receives from that property goes into the treasury of the city of Boston. And the only exemption they have to-day is the chapel on the Back Bay. Now, sir, there is one other consideration which I desire to present. An overwhelming majority of the Society have decided that the property is unfit for church purposes; a small minority, mostly elderly people, very set in their ways, desire to continue this as a place of worship. It will be plainly seen that to gratify

them in this respect this property must again be exempted from taxation, which will result in a loss to the city of Boston. If, however, this property were made to serve the best uses of the trust, the land leased, and blocks of stores built upon it, a tax of one and one half per cent on their probable value of \$1,000,000 would put into the city treasury \$15,000 annually, and this is the sum which the taxpayers of Boston must contribute to gratify these remonstrants.

Now, in regard to these remonstrants, Mr. President, I would say they are highly respectable; but there are only sixty-eight in all, and that is a very small number, considering that one half of them are composed of the pew proprietors and their wives, and the remainder are gathered from all who ever attended the Old South Church. But, sir, if you would read over the list of persons and their ages, I think you would find how easy it is for persons to get tremendously set in their ways about houses of worship, etc. I have seen good people who are so determined that no consideration will move them, and I suppose if this Society should go on until there was nobody to object, the Society would die of decay. The opposition having no case, finally resort to a grand strategic movement, conceived by their counsel, and which, offered as a substitute bill, on which there was no hearing by petition or remonstrance, Senator Hayes calls, with charming assurance, "a method of settling unhappy differences by mutual concessions on equitable principles." The title of this bill is as follows: "An act relating to the Old South Society in Boston, and the disposing of its meeting-house." We think it should be more truly rendered as also providing for the dissolution of the Society. Here the argument against the bill may be condensed into the following points: First, the question before the committee, and the only one properly before them, by petition

and remonstrance, was the prayer of the petitioners. None of the remonstrants favored this scheme before the committee. As evidence of this, the following letters were submitted : —

" ANDOVER THEOLOGICAL SEMINARY, Feb. 16, 1874.

" SAMUEL JOHNSON, Esq., *Chairman, etc.* :

" *Dear Sir*, — I understand that I am regarded as a remonstrant against the petition of the Old South pew proprietors for liberty to lease their church edifice. I had strong feelings of opposition to the lease of that edifice for a post-office, and I expressed my feelings to various individuals with whom I was conversing. When, however, I was asked to sign a remonstrance against your *first* petition to the legislature, I refused, for I had then examined the subject only on one side. Before the Society presented their *second* petition to the legislature, I had examined the subject on both sides; and, as I refused to sign a remonstrance against the first petition because I was certain that I did not know enough, so I refused to sign a remonstrance against the second petition because I thought that I knew too much. I had found the arguments in favor of leasing your church property weightier than I previously supposed; far weightier *after* than *before* the use of the meeting-house as a post-office. In granting the first petition, the legislature *added* strength to the reasons for granting the second. I find that Madam Norton did not give her lot of land to persons *viewed as living in particular streets*, but to persons *viewed as forming a particular society*. And she gave it not merely 'for their assembling themselves together publicly to worship God,' but also for the erecting of a dwelling-house 'for the ministers of the Old South Society,' and 'for no other intent, use, or purpose whatsoever.' Still, you have been justified by the *spirit* of Madam Norton's will, by the 'opinion' of Theophilus Par-

sons given in 1800, by the 'opinion' of Jeremiah Mason given in 1845, to deviate from the *letter* of the will, and to erect commercial houses on the land given expressly for a parsonage house. You have been allowed to act on the principle that the chief thing in the mind of Madam Norton was not the *exact location* of either the parsonage or the meeting-house, but *the subserviency of each to the religious interests* of the Old South Society.

"Has not the legislature repeatedly sanctioned this principle? Since I have heard that so many of the petitioners — men of prudence, caution, and religious fidelity to their trusts — have made great sacrifices in order to retain their present meeting-house, and have decided, not suddenly but deliberately, not without self-denial, but after a prolonged struggle with their cherished attachments, that the house is, in various respects and for various reasons, unfitted for their religious needs, and is becoming every year more and more unfitted for the purpose which the donor had in view, I have been convinced that the legislature cannot refuse your present petition without infringing the rights of the church, and introducing a precedent which, if followed, would endanger the liberties of the Commonwealth. Excuse this long letter, and believe me to be,

"Yours very respectfully,

"EDWARDS A. PARK."

"BROOKLYN, N. Y.

"HON. AVERY PLUMER :

"*Dear Sir*,—I have earnestly desired that, if possible, the Old South Meeting-house might be preserved, but not that the property of the Society should be divided.

"I make this statement because I am informed that my name is used as favoring a plan for division.

"Yours respectfully and truly,

"EGBERT C. SMYTH."

" BOSTON, April 13, 1874.

" SAMUEL JOHNSON, Esq. :

" *My Dear Sir*, — In consenting to preach in the Old South Meeting-house on condition that the legislature should refuse to grant the petition for its removal, I had no expectation that my name would be used to influence the decision in any way.

" As I now understand the matter, it is my opinion that the prayer of the petitioners ought to be granted, and especially that there should be no division of the property.

" Respectfully yours,

" MARK HOPKINS."

" *My Dear Sir*, — I have a word more to add concerning the Old South.

" The question of relinquishing the Old South, with all its associations and memories, religious and patriotic, and giving it up to secular uses and ends, is one thing.

" The question of dividing the Old South, and making fragments of that which can exist at all only as a unit, is quite another thing.

" My convictions are unchanged concerning the first question. I still cling to the idea and the hope of maintaining the Old South where it is and as it is, that the memories and examples and deeds of our fathers may, in the midst of commercial and material enterprise and labors, elevate and inspire us.

" But I am utterly and equally opposed to the contemplated division. That involves, as it seems to me, an entirely different set of principles, and really another issue. Such a division shatters my confidence in the end promised.

" Pray do not allow the legislative sword to divide this child.

" Yours, very respectfully,

" E. B. WEBB.

" F. B. HAYES, Esq., Mount Vernon Street."

Second. This bill is exceedingly unjust in its terms. The old meeting-house and land under and adjacent, consists of over 13,000 feet, — one of the most valuable corner lots in the city of Boston, worth at least fifty dollars per foot; total value, \$650,000. The land on the opposite corner has sold for twice this sum per foot. It is proposed to give this property to these remonstrants, representing sixteen pews, for its valuation for religious purposes, which is only \$35,000, taking from this trust the enormous difference between these sums! Further comment on this is unnecessary.

Third. This scheme is compulsory in its method, reflects upon the trustees, does violence to the purposes for which the trust was created, and extinguishes the old Third Church.

The only saving clause in this bill is the provision which it makes for the preservation of the old meeting-house for religious, charitable, and memorial purposes, in regard to which we have only to say, the trustees have as much love for the old edifice as any one, and will do all they can to preserve it as long as possible with due fidelity to their trust. One hundred years ago the Old South Church was the only place where the people could gather for patriotic purposes. Faneuil Hall was not enlarged until the present century, consequently not unfrequently two thousand people assembled from time to time within the Old South Church.

The Cradle of Liberty was not big enough for the babe that was being born, and the Old South did good service as midwife. But because the trustees of the church were so liberal as to use it for patriotic purposes when it was so needed, shall we, in these times of peace and great increase of population, when the income from this property is needed to carry out the purposes of the trust as created, confiscate it for any memorial, monumental, antiquarian, historical, or other purpose than the legitimate work of a Christian church?

Mr. President, in the necessity which seems to exist, that this ancient society should leave its old tabernacle and enter upon a new field of usefulness, do we not see the operation of a law which extends through all this world's affairs, — namely, that change from the *old* to the *new* which is the inevitable result of all advance, progress, and growth? The officers of this church so understand it. They feel that a dawdling, puny existence on the old spot, amidst a wilderness of warehouses, would show them to be unfit to make good use of the trust given them. That they do comprehend the situation is shown by this quotation from the evidence of Deacon Allen: "We cannot live on our past history; every successive age has to make history for itself, good or bad. Any individual family or community who try to live upon the reputation of their ancestors are sure to come to nothing themselves."

And now, Mr. President, I ought to bring my share of this discussion to a close. There is much more that might, and doubtless will, be forcibly urged in behalf of the petitioners. I have not tried to follow my friend, the senator of the Second Suffolk District, in detail. I urge my own views, and support the report of the committee. This entire estate is a religious trust. Mrs. Norton gave it to a company of Christian men, in trust for themselves and others who were associated with them, in the solemn covenants of a Christian church, and for the purposes for which the original Third Church existed in 1669, its income should be as nearly as possible expended in the year of our Lord 1874 and ever after. Fidelity demands that it should be wisely employed where it will do the most good, and I have no doubt that the majority in this case are in the line of succession, and should both take the direction and assume the responsibility of the whole thing.

Therefore, in conclusion, I say that by every consideration we ought to reject the substitute bill and accept the unanimous report of your committee granting the prayer of the petitioners. Let the Old South carry out these purposes of future usefulness in this expanding city, which they have conceived with wise deliberation, and in a generous scale, as time will show.

Let us not forget that this pious woman is one of the first of the list of Boston names to be held in perpetual remembrance for efforts to do good to the generations following, and the Old South, one and undivided, should be her monument!

She gave her property to the church she and her husband loved; and I must again repeat that quaint old phraseology she employed, whose musical refrain shall end as well as commence my plea:—

“Being the Third Church of Christ in Boston, from time to time, and at all times forever.”

I have already characterized these words as both a prayer and a prediction! As such we accept them, and make the fitting response,—Amen!

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My dear Mr Ludden

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puzzler - I cannot think
of anything to which it
could refer but a speech
in the Senate which did
happen to get printed -

However, you shall have the
information you desire any
how - Yrs Sincerely

Matthew Abbott Lane



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